

## HOUSE BILL NO. 216

INTRODUCED BY D. HIMMELBERGER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE PURCHASE OF RESTRICTED SUBSTANCES BY MINORS; INCREASING ~~THE~~ CERTAIN PENALTIES FOR UNLAWFUL ATTEMPT TO PURCHASE AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE; MAKING IT UNLAWFUL FOR A PERSON UNDER 18 YEARS OF AGE TO ATTEMPT TO PURCHASE TOBACCO PRODUCTS AND CREATING PENALTIES FOR THE UNLAWFUL ATTEMPT TO PURCHASE TOBACCO PRODUCTS; EXEMPTING FROM LIABILITY MINORS ASSISTING IN ENFORCEMENT OF THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AND AMENDING SECTIONS 16-3-301, 16-11-310, 45-5-624, AND 45-5-637, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 16-3-301, MCA, is amended to read:

**"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1) It is unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for any licensee, ~~his or her~~ a licensee's employee ~~or employees~~, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age; or

(b) ~~any intoxicated person~~ or any person actually, apparently, or obviously intoxicated.

(4) Any person under 21 years of age or any other person who knowingly misrepresents ~~his or her~~ the person's qualifications for the purpose of obtaining an alcoholic beverage from ~~such~~ the licensee is equally guilty with ~~said~~ the licensee and, upon conviction ~~thereof~~, is subject to the penalty provided in ~~45-5-624 16-6-314~~ 45-5-624. However, nothing ~~herein contained in this section~~ may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(5) It is ~~further~~ mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard, ~~as~~ issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

(6) For purposes of ~~this title and~~ 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

**SECTION 2.** SECTION 16-11-310, MCA, IS AMENDED TO READ:

**"16-11-310. Minors not liable for possession or attempt to purchase.** An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession of or the attempt to purchase a tobacco product ~~possessed~~ for the purposes of enforcing this part."

**Section 3.** Section 45-5-624, MCA, is amended to read:

**"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance:

(a) for the first offense, shall be fined an amount not to exceed ~~\$100-\$200~~ \$150 and:

(i) must have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and shall be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) ~~shall~~ MAY be ordered to perform community service if a community service program is available; and

(iii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, ~~if any is available~~, all costs of participation in a community-based substance abuse information course, if one is available;

(b) for a second offense, shall be fined an amount not to exceed ~~\$200~~ \$300 \$200 and:

(i) must have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) ~~shall~~ MAY be ordered to perform community service if a community service program is available; and

(iii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, ~~if any is available~~, all costs of participation in a community-based substance abuse information course, if one is available;

(c) for a third or subsequent offense, shall be fined an amount not less than ~~\$300~~ \$400 \$300 or more than \$500 and:

(i) must have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, must have the person's driver's license revoked for 1 year or until the person reaches ~~the age of 18~~ years of age, whichever occurs last;

(ii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, ~~if any is available~~, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of public health and human services, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense, shall be fined an amount not to exceed ~~\$50~~ \$150 and MAY be ordered to

perform community service ~~if a community service program is available;~~

(b) for a second offense, shall be fined an amount not to exceed ~~\$100~~ \$200 and:

(i) ~~shall~~ MAY be ordered to perform community service ~~if a community service program is available;~~

and

(ii) must have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, shall be fined an amount not to exceed ~~\$200~~ \$300 and:

(i) ~~shall~~ MAY be ordered to perform community service ~~if a community service program is available;~~

(ii) must have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) shall be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance; ~~shall be fined an amount not to exceed \$50 if the person was 18 years of age or older at the time that the offense was committed or \$100 if the person was under 18 years of age at the time that the offense was committed~~

~~(a) for a first offense, shall be fined an amount not less than \$250 and be ordered to perform community service if a community service program is available;~~

~~(b) for a second or subsequent offense, shall be fined an amount not less than \$500 and be ordered to perform community service if a community service program is available. SHALL BE FINED AN AMOUNT NOT TO EXCEED \$150 IF THE PERSON WAS 18 YEARS OF AGE OR OLDER AT THE TIME THAT THE OFFENSE WAS COMMITTED AND MAY BE ORDERED TO PERFORM COMMUNITY SERVICE OR SHALL BE FINED AN AMOUNT NOT TO EXCEED \$200 IF THE PERSON WAS UNDER 18 21 YEARS OF AGE AT THE TIME THAT THE OFFENSE WAS COMMITTED AND MAY BE ORDERED TO PERFORM COMMUNITY SERVICE.~~

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under

1 18 years of age when the defendant failed to comply must be transferred to the youth court. If  
2 proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated  
3 as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment  
4 under 41-5-1512.

5 (6) A person commits the offense of interference with a sentence or court order if the person  
6 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section  
7 or a youth court disposition order for a youth found to have violated this section and upon conviction shall  
8 be fined \$100 or imprisoned in the county jail for 10 days, or both.

9 (7) A conviction or youth court adjudication under this section must be reported by the court to  
10 the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses  
11 committed but may not be considered part of the person's driving record for insurance purposes unless  
12 a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments  
13 for contingent termination of certain text.)"

14  
15 **Section 4.** Section 45-5-637, MCA, is amended to read:

16 **"45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited --**  
17 **unlawful attempt to purchase -- penalties.** (1) A person under 18 years of age who knowingly possesses  
18 or consumes a tobacco product, as defined in 16-11-302, commits the offense of possession or  
19 consumption of a tobacco product.

20 (2) A person convicted of possession or consumption of a tobacco product:

21 (a) shall be fined ~~\$35~~ \$50 for a first offense, no less than \$75 or more than \$100 for a second  
22 offense, and no less than \$100 or more than \$250 for a third or subsequent offense; or

23 (b) may be adjudicated on a petition alleging the person to be a youth in need of intervention under  
24 the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

25 (3) A person convicted of possession or consumption of a tobacco product may also be required  
26 to perform community service or to attend a tobacco cessation program.

27 (4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product  
28 if the person knowingly attempts to purchase a tobacco product, as defined in 16-11-302. A person  
29 convicted of attempt to purchase a tobacco product:

30 (a) for a first offense, shall be fined an amount not less than ~~\$250~~ \$50 and MAY be ordered to

1 ~~perform community service if a community service program is available;~~

2 ~~(b) for a second or subsequent offense, shall be fined an amount not less than \$500 TO EXCEED~~  
3 ~~\$100 and MAY be ordered to perform community service if a community service program is available.~~

4 ~~(4)(5)~~ The fines collected under ~~subsection (2)~~ subsections (2) and (4) must be deposited to the  
5 credit of the general fund of the local government that employs the arresting officer, or if the arresting  
6 officer is an officer of the highway patrol, the fines must be credited to the county general fund in the  
7 county in which the arrest was made."

8

9 NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 191 AND [THIS ACT] ARE BOTH  
10 PASSED AND APPROVED, THE INSERTION OF THE WORD "SHALL" IN 45-5-624(3)(A) IN HOUSE BILL NO. 191 IS VOID.

11 - END -